

Atty. Docket No.: 1050.P001US

10/057,604

REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed July 12, 2005. Applicant respectfully requests reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 1-3, 7-9, 12 and 13 stand rejected under 35 U.S.C. 102(b) as being anticipated by Stoops(U.S. Patent No. 5,251,945). The Examiner states:

Stoops teaches a device for protecting and transporting articles comprising a continuous cradle 12, carrying straps 48, a restraining strap 34, a handle 52, and the device folds into a compact shape when not in use (see column 5 lines 44-50). The method recited in claims 8, 9, 12 and 13 are clearly anticipated by the structure set forth in the figures and the function of the device taught in the specification of Stoops.

The applicant respectfully submits that Stoops fails to disclose a cradle as taught in the present invention. The present invention utilizes a continuous cradle along substantially all of an object's bottom side to substantially distribute support of large and relatively flat objects, such as newsprint pad or picture frame (Application No. 10/5,057,604, Figures 10 and 11; and Paragraphs 39-41), across most of the object's span to prevent sagging or deformation of the object being carried. (Application No. 10/5,057,604, Paragraphs 27-28) This can clearly be distinguished from Stoops wherein a semi-flaccid main panel 12 forms the bottom of the carrying device. This main panel is at least semi-flaccid (Stoops, Col. 2, Lines 29-30) along the bottom of the object. Flaccid material would fail to distribute support of the object over substantially all of the object's bottom surface. The applicant respectfully submits that this flaccid material "lacks firmness or resilience" as this is the definition of "flaccid" from Webster's New College Dictionary copyright 1995. Main panel 12 lacks firmness, fails to support, and merely wraps around the object. Thus, the main panel 12 of Stoops cannot be construed as a cradle operable to substantially distribute the support of the object.

Atty. Docket No.: 1050.P001US

10/057,604

With respect to claim 8, the applicant respectfully submits that the present invention can again be distinguished from Stoops in that Stoops fails to teach cradling or supporting the object as discussed with reference to Claim 1. Rather, Stoops merely provides a semi-flaccid panel which may be wrapped around an object (Stoops, Col. 2, Lines 29-30). Thus, the applicant respectfully submits that Stoops failed to disclose a cradle as taught in the present invention.

The applicant respectfully submits that the examiner has failed to establish a prima facie case of anticipation with respect to Stoops. Anticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention arranged in the claim. As the claimed invention contains a continuous cradle which supports and distributes the load associated with the object to be carried along the length of the cradle, this can be distinguished from what is taught in Stoops where a flaccid material is used as the bottom of a carrying device in which the object is wrapped. Thus, Stoops fails to teach that the object is supported in the cradle along the length of the object. Therefore, the applicant respectfully traverses the examiner's argument that claims 1-3, 7-9, 12 and 13 should be rejected under 35 U.S.C. § 102(b) as being anticipated by Stoops because of the structure set forth in the figures and the function of the device taught in the specification of the Stoops. Therefore, the applicant respectfully requests that claims 1-3, 7-9, 12 and 13 be allowed.

Therefore, the applicant respectfully requests that the examiner withdraw his objections to 1-3, 7-9, 12 and 13 under 35 USC § 102. As such, Applicant respectfully requests the Examiner withdraw the rejections and allow Claims 1-3, 7-9, 12 and 13.

Rejections under 35 U.S.C. § 103

Claims 4-6, 10, 11 and 14-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Stoops (U.S. Patent No. 5,251,945) in view of Marsh, Jr. (U.S. Patent No. 5,505,353). The Examiner states:

Stoops teaches the claimed device except for making the carrying straps adjustable in length and providing a second restraining strap. Marsh teaches a similar article carrier comprising a carrying strap with a means for adjustment 96 and two restraining straps 102. To provide the carrying strap of

Atty. Docket No.: 1050.P001US

10/057,604

Stoops with a means for adjustment in the manner as taught by Marsh in order to allow the length of the strap to be adjusted for a particular user or purpose would have been obvious to one of ordinary skill in the art. To further provide the Stoops carrier with a second restraining strap in the manner as taught by Marsh to provide increased support to the device being carried would also have been obvious to one of ordinary skill in the art. The method recited in claims 10 and 11 is clearly obvious over the structure set forth in the figures and the function of the device taught in the specification of Stoops as modified by the structure set forth in the figures and the function of the device taught in the specification of Marsh.

Applicant respectfully points out that in order to combine references for an obviousness rejection, there must be some teaching, suggestion or incentives supporting the combination. In *re Laskowski*, 871 F.2d 115, 117, 10 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989). The mere fact that the prior art could be modified does not make that modification obvious unless the prior art suggests the desirability of the modification. In *re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). In addition, it is well established that Applicant's disclosure cannot be used to reconstruct Applicant's invention from individual pieces found in separate, isolated references. In *re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988).

Applicant respectfully submits that there is no motivation, teaching or suggestion to combine Stoops with Marsh. Therefore, the rejection on a combination of these references is inappropriate. Withdrawal of the rejection allowance of Claims 4-6, 10, 11 and 14-20 respectfully requested.

Applicant further submits that neither Stoops or Marsh alone nor the combination of the two teaches or suggests make obvious the invention recited in Claims 4-6, 10, 11 and 14-20 because the cited references lack a continuous cradle on substantially all of an object's bottom side to substantially distribute support of large and relatively flat objects, such as a newsprint pad or picture frame, (Application No. 10/057,604, figures 10 and 11 and 39-41) across most of the object span to prevent sagging or deformation of the object being carried. Stoops merely teaches a semi-flaccid panel that may be wrapped around the object. Thus, the flaccid material of Stoops fails to prevent sagging or deformation of the object being carried. Marsh teaches an object that

Atty. Docket No.: 1050.P001US

10/057,604

provides a strap suspension. Upon examining the figures in Marsh, Marsh merely teaches a strap suspension that may be used to support an object. This support, as shown in figures 2 through 7, is not continuous along the entire bottom surface of the object and fails to distribute support of the object over substantially all of the object's bottom surface. Thus, Marsh also fails to prevent sagging or deformation of the object being carried. Marsh and Stoops, alone or in combination, fail to teach a continuous cradle to substantially support all of the object's bottom side and evenly distribute that support. Marsh merely teaches a bottom strap is present to provide non-continuous support along the bottom of the object carried while Stoops merely teaches a semi-flaccid main panel 12 that may be wrapped around an object.

The applicant respectfully submits the claimed invention employs a continuous cradle made from a flexible pliable material or a rigid cradle with which to distribute the support of the object to be carried along substantially all of the bottom of the object when the object is lifted.

As previously stated, the claimed invention utilizes a continuous cradle along substantially all of an object's bottom side to substantially distribute support of the object being carried across most of the object's span to prevent sagging or deformation of the object being carried. (Application No. 10/5,057,604, Paragraphs 27 - 28) This can clearly be distinguished from Stoops wherein a single strap 18 is sewn to form a bottom support. This bottom support as shown in Figures 1 and 2 of Stoops or in Figure 6 of Marsh is not continuous along the bottom of the object and fails to distribute support of the object over substantially all of the object's bottom surface. Thus Stoops and Marsh fail to teach a continuous cradle to substantially support all of an object's bottom side and evenly distribute that support.

Stoops and Marsh merely teach that a bottom strap is present to provide non-continuous support along the bottom of the object to be carried. As Stoops and Marsh fail to teach a device for carrying an object with a continuous cradle operable to distribute support of the object substantially along the bottom surface of the object, one would not reach the claimed invention that has a continuous cradle to support the carried object with carrying straps attached to opposing ends of the cradle that form a single lifting point, from the teachings of Stoops and Marsh alone or in combination.

Applicant respectfully submits that there is no motivation, teaching or suggestion to combine Stoops with Marsh. Therefore, the rejection on a combination of these references is inappropriate. Therefore, the applicant respectfully requests that the examiner withdraw his

Atty. Docket No.: 1050.P001US

10/057,604

objections to 4-6, 10, 11 and 14-20 under 35 USC § 103. As such, Applicant respectfully requests the Examiner withdraw the rejections and allow Claims 4-6, 10, 11 and 14-20.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 1-20.

Should the Examiner have any questions or desire clarification of any sort, the Examiner is invited to telephone the undersigned at the number listed below. Please reference Attorney Docket No. 1050.P001US. The applicant respectfully requests the opportunity of a telephone interview with the Examiner should the Examiner not find the Claims allowable.

For the avoidance of all doubt, any amendment made to the specification and claims which results in deletion of scope or subject-matter is made without prejudice and with the express reservation of the right to reinstate such subject-matter or scope in this present application and with specific reservation of the right to file one or more related applications directed to such deleted subject-matter or scope.

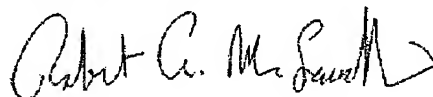
Atty. Docket No.: 1050.P001US

10/057,604

While Applicants believe no fee is due with the transmission of this Information Disclosure Statement, if any fees are due, the Commissioner is hereby authorized to charge Deposit Account No. 50-2240 of Koestner Bertani, LLP.

Respectfully submitted,

Koestner Bertani, LLP



By: _____

Robert A. McLauchlan

Reg. No. 44,924

ATTORNEY FOR APPLICANTS

Date: April 13, 2005

Koestner Bertani, LLP
4201 W. Parmer Lane
Suite A-100
Austin, Texas 78727
(512) 399-4100
(512) 692-2529 (Fax)